



THE CENTER FOR FOOD SAFETY

October 20, 2014

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
Filed at: http://www.epa.gov/foia/make_a_request.html

RE: FOIA Request–neonicotinoid coated seeds, “treated article exemption”

To EPA’s FOIA Officer:

The Center for Food Safety (CFS) is a 501(c)(3) nonprofit organization that addresses the impacts of our current industrial food production system on human health, animal welfare, and the environment. Consistent with this mission and pursuant to 7 C.F.R. § 370.1 and the Freedom of Information Act, 5 U.S.C. § 552, I, Larissa Walker, on behalf of CFS, respectfully request the following information, which is believed to likely be within the **Office of Pesticide Programs**:

Referring to any and all of the neonicotinoid insecticides, that is, acetamiprid, clothianidin, dinotefuran, imidacloprid, thiacloprid and thiamethoxam:

a) All documents related to EPA’s basis for interpreting the “treated article exemption” in EPA regulation 40 CFR § 152.25(a), “Exemptions for pesticides of a character not requiring FIFRA regulation,” to apply to neonicotinoid-coated seeds of any crop.

b) The full EPA paper entitled: “Discussion Paper: Harmonization of Imported Treated Seed in Canada and the United States,” prepared jointly by EPA and Health Canada's Pest Management Regulatory Agency, described in the Aug. 30, 2000, Federal Register Notice, “Pesticides; Harmonization of Treated Seed Policies and Requirements in Canada and the United States; Notice of Availability” at 65 FR 52752-3 (OPP Docket #OP-0067).¹

¹ FR Notice online at: <https://www.federalregister.gov/articles/2000/08/30/00-22010/pesticides-harmonization-of-treated-seed-policies-and-requirements-in-canada-and-the-united-states>

c) Any document showing EPA has, from Jan. 1, 2009, to present, taken any action under Section 7(a)(2) of the Endangered Species Act (ESA) with respect to EPA's determinations to apply the "treated article exemption" to any crop seeds coated with any neonicotinoid coating product.² Specifically, we seek documentation that EPA ever conducted analyses of the effects of its actions on any threatened or endangered species, or the critical habitat of such species, and whether EPA either requested information from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, or formally or informally consulted with those agencies, on whether any ESA-listed species may be present in the area where those crop seeds were planted, and on any potential resulting effects.

d) Any other emails, memoranda, reports, letters, risk analysis, scientific data, summaries, studies, plans, policy directive, notes, guidance or other material in any form whatsoever related to EPA interpreting the "treated article exemption" 40 CFR § 152.25(a) to apply to any neonicotinoid-coated seeds.

CFS requests this information in light of the President's "Memorandum for the Heads of Executive Departments and Agencies" dated January 21, 2009, which states:

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails...In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public. All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. The presumption of disclosure also means that agencies should take affirmative steps to make information public.

Exec. Memorandum for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 4,683 (Jan. 21, 2009). This request is being sent to the EPA FOIA officer with the understanding that it will be forwarded to other officers, offices, or departments with information pertinent to this request.

EXPEDITED PROCESSING IS NECESSARY

CFS, as an organization whose primary goal is dissemination of information and advocacy on behalf of the public (see below), has an urgent need to inform the public about government activity concerning information on the impact of neonicotinoid, pesticides and Colony Collapse

² 16 U.S.C. § 1536(a)(2)).

Disorder impacts on honeybees in organic farming as well as on agriculture more generally, as well as on endangered species and ecosystem sustainability.

REQUEST FOR FEE-WAIVER

CFS requests that pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), EPA waive all fees in connection with the procurement of this information. As demonstrated below, the nature of this request meets the test for fee waiver as expressed in the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(A)(iii).

In deciding whether the fee waiver criteria is satisfied, CFS respectfully reminds EPA that FOIA is inclined toward disclosure and that the fee waiver amendments were enacted to allow further disclosure to nonprofit, public interest organizations. *See* 132 Cong. Rec. S. 14270-01, (statement of Sen. Leahy) (“[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information.”) Furthermore, the Ninth Circuit Court of Appeals has interpreted this fee waiver section broadly, holding that the section “is to be liberally construed in favor of waivers for noncommercial requesters.” McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284 (9th Cir. 1987) (citing Sen. Leahy).

I. The present disclosure is in the public interest because it will significantly contribute to public understanding of the operations or activities of government.

The requested disclosure will contribute to public understanding of the operations or activities of the government. 5 U.S.C. § 552(a)(4)(A)(iii).

A. The subject of the disclosure concerns “the operations and activities of the government.”

EPA is, *inter alia*, responsible for regulating U.S. pesticide safety. Over the last approximately 13 years EPA has approved dozens of use of neonicotinoid insecticides

B. The disclosure is “likely to contribute significantly to public understanding” of government operations or activities.

CFS is a non-profit organization that informs, educates and counsels the public —via legal action, our website, our True Food Network, books, reports, email alerts and weekly news summaries — on the harm done to human health, plant and animal welfare, and the broader environment by pesticides and industrial agriculture generally. Accordingly, CFS is an effective vehicle to disseminate information on the impact of pesticides and Colony Collapse Disorder in

bees on organic farming, as well as on agriculture more generally and on endangered species and ecosystem sustainability.

Simultaneously, this FOIA will help CFS fulfill its well established function of public oversight of government action. Public oversight of agency action in particular is a vital component in our democratic system and is the bedrock upon which the FOIA stands.

II. Obtaining the information is of no commercial interest to the Center.

The Center for Food Safety is a 501(c)(3) non-profit environmental advocacy organization that works to address the impacts of our food production system on human health, animal welfare and the environment. CFS works to achieve its goals through grassroots campaigns, public education, media outreach, and litigation. Under FOIA, a commercial interest is one that furthers a commercial, trade, or profit interest as those terms are commonly understood. See e.g., OMB Fee Guidelines, 52 Fed. Reg. 10017-18. Such interests are not present in this request. In no manner does CFS seek information from the EPA for commercial gain or interest. CFS respectfully files this FOIA request pursuant to its goal of educating the general public on the adverse effects of pesticides and industrial agriculture. Upon request and free of charge, CFS will provide members of the public with relevant information obtained from EPA.

Based upon the foregoing, the CFS requests that this FOIA be classified within the EPA fee waiver category and that EPA send the requested information as required by law. If any exemption from FOIA's disclosure requirement is claimed, please describe in writing the general nature of the document and the particular legal basis upon which the exemption is claimed. Should any document be redacted, please indicate the location of the redaction through the use of black ink. Please provide any and all non-exempt portions of any document which may be partially exempt due to some privilege as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

Please send all materials to the Washington, D.C. address on the letterhead. Call me at (202) 547-9359 if you have any further questions about this request. Thank you for your attention to this request.

Sincerely,

/s/

Larissa Walker